

Appendix E

Alcohol/Drug Use - Abuse and Testing

The City of Newberg works to maintain a safe and efficient work environment. Employees who misuse controlled substances, prescription or illegal drugs, or alcoholic beverages pose a risk both to themselves and to everyone who comes into contact with or depends upon them and risks damage to City's reputation.

The City expects employees to report to work in a condition that is conducive to performing their duties in a safe, effective and efficient manner. An employee's off-the-job as well as on-the-job involvement with drugs and alcohol can have a significant impact on the workplace and can present a substantial risk to the employee who is using alcohol and drugs, to coworkers and others.

This policy applies to all employees (except where noted in this policy or where it is inconsistent with applicable law and/or collective bargaining agreement principles). This policy revises and supersedes all previous drug and alcohol testing policies and practices.

Prohibited Conduct

- Possession, transfer, use or being under the influence of any alcohol while on City property, on City time, while driving City vehicles (or personal vehicles while on City business), or in other circumstances which adversely affect the City operations or safety of City employees or others. Law enforcement employees may possess or transfer alcohol during the performance of their law enforcement duties, e.g., collecting evidence.
 - The conduct prohibited by this rule includes consumption of any intoxicating liquor within four hours of reporting to work or during rest breaks or meal periods. If use of alcoholic liquor or an alcohol "hangover" adversely affects an employee's physical or mental faculties while at work to any perceptible degree or the employee's blood alcohol content exceeds .02 percent, the employee will be deemed "under the influence" for purposes of this rule.
- Possession, distribution, dispensing, sale, attempted sale, use, manufacture or being under the influence of any narcotic, hallucinogen, stimulant, sedative, drug or other controlled substance while on City property, on City time, while driving City vehicles (or personal vehicles while on City business), or in other circumstances which adversely affect City operations or safety of City employees. (Law enforcement employees may possess narcotics or other controlled substances while engaging in law enforcement duties.) Employees may not have any detectable amount of narcotic, hallucinogen,

stimulant, sedative, drug or other controlled substance in their system while on City property or on City time.

- The conduct prohibited by this rule includes consumption of any such substance prior to reporting to work or during rest breaks or meal periods. If use of such substances or withdrawal symptoms adversely affects an employee's physical or mental faculties while at work to any perceptible degree, or the employee tests "positive" for any such substances by screening and confirmation tests, the employee will be deemed "under the influence" for purposes of this rule.
 - As used in this policy, "controlled substance" includes, but is not limited to, any controlled substance listed in Schedules I through V of the Federal Controlled Substance Act, including marijuana that is otherwise lawful to use under Oregon, Washington or any other state's law.
- Bringing to City property, or possessing, items or objects on City property that contain any "controlled substance," including, for example, "pot brownies" and candy containing marijuana. This prohibition does not apply to employees engaged in law-enforcement work. No employee, regardless of position held, may knowingly serve items containing marijuana or any other "controlled substance" to co-workers, members of the public, or elected officials while on work time or on/in City property.
- Bringing marijuana-related equipment or any devices marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana (among other drugs), such as pipes, bongs, "vape" pens, smoking masks, roach clips, and or other drug paraphernalia. This prohibition does not apply to employees while engaging in law-enforcement work.
- Bringing equipment, products or materials that are marketed for use or designed for use in planting, propagating, cultivating, growing, or manufacturing marijuana, including live or dried marijuana plants to City property. This prohibition does not apply to employees while engaging in law-enforcement work.

Prescription Drugs and Medical Marijuana

With the exception of medical marijuana, nothing in this rule is intended to prohibit the use of a drug taken under supervision by a licensed health care professional, where its use does not present a safety hazard or otherwise adversely impact an employee's performance or City operations.

Employees must inform their supervisor about any prescription drugs that they are using which could adversely affect their physical or mental faculties to any perceptible degree. If an employee's use of such prescription drugs could adversely affect City operations or safety of City

employees or other persons, the City may reassign the employee using the drugs to other work or take other appropriate action to accommodate the physical or mental effects of the medication. Failure to report use of prescription drugs covered by this rule will subject an employee to disciplinary action, up to and including termination.

The use of marijuana, which is a Schedule 1 controlled substance under federal law, is expressly prohibited under this policy, even if its medical use is authorized under state law. Employees who use medical marijuana in connection with a disability should discuss with their Supervisor other means of accommodating the disability in the workplace, as the City will not agree to allow an employee to use medical marijuana as an accommodation.

Reasonable Cause Testing

If there is reasonable cause to suspect that an employee is under the influence of controlled substances or alcohol during work hours, or has used drugs or alcohol in violation of this policy, the City may require the employee to undergo testing for controlled substances or alcohol.

As used in this policy, unless the context indicates otherwise:

- The terms "test" and "testing" shall be construed to mean job impairment field tests, laboratory tests, breathalyzer tests, psycho neurological examinations and other tests of saliva, blood and urine. No testing shall be performed under this rule without the approval of the supervisor or the supervisor's designee.
- "Reasonable cause" as used in this policy means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is more likely than not under the influence of controlled substances or alcohol, or has used drugs or alcohol in violation of this policy. Circumstances which can constitute a basis for determining "reasonable cause" may include, but are not limited to:
 - a pattern of abnormal or erratic behavior;
 - information provided by a reliable and credible source;
 - a work-related accident;
 - direct observation of drug or alcohol use;
 - presence of the physical symptoms of drug or alcohol use (*i.e.*, glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
 - unexplained significant deterioration in individual job performance;
 - unexplained or suspicious absenteeism or tardiness;
 - employee admissions regarding drug or alcohol use; and
 - unexplained absences from normal work areas where there is reason to suspect drug or alcohol related activity.

Supervisors should detail in writing the specific facts, symptoms or observations that form the basis for their determination that reasonable cause exists to warrant alcohol or controlled substance testing of an employee or a search. This documentation shall be forwarded to supervisor, department director and Human Resources Director. Whenever possible, supervisors should locate a second employee or witness to corroborate his/her "reasonable cause" findings.

An employee whose initial laboratory screening test for controlled substances yields a positive result shall be given a second test. The second test shall use a portion of the same test sample withdrawn from the employee for use in the initial screening test. If the second test confirms the initial positive test result, the employee shall be notified of the results in writing by the City. The letter of notification shall state the particular substance identified by the laboratory tests. The employee may request a third test of the sample within 24 hours of receiving the letter of notification, but such testing will be paid for by the employee.

Post-Accident Testing

Employees are subject to testing when they cause or contribute to accidents that seriously damage a City vehicle, machinery, equipment or property or result in an injury to themselves or another employee requiring offsite medical attention.

Search of Property

When reasonable cause exists to believe an employee possesses alcohol or a controlled substance on City property, or has otherwise violated provisions of this rule regarding possession, sale or use of controlled substances or alcohol, City may search the employee's possessions located on City property, including but not limited to, clothes, locker, lunchbox, toolbox, and desk. Employees should have no expectation of privacy in any items they bring on to City property, or in property, equipment or supplies provided by City to employee.

Employee Refusal to Test/Search

An employee who refuses to consent to a test or a search when there is reasonable cause to suspect that the employee has violated this policy is subject to disciplinary action up to and including termination. The reasons for the refusal shall be considered in determining the appropriate disciplinary action.

An employee who refuses to cooperate with any and all tests required by this policy is also subject to discipline, up to and including termination. This includes, but is not limited to, tampering with, or attempting to tamper with, a specimen sample, using chemicals or other ingredients to mask or otherwise cover up the presence of metabolites, drugs or alcohol in a specimen, or providing a blood or urine specimen that was produced by anyone or anything other than the employee being tested.

Crimes Involving Drugs and/or Alcohol

Employees shall report, to their supervisor:

- any criminal arrest or conviction for drug- or alcohol-related activity within five days of the arrest or conviction;
- entry into a drug court or diversion program; or
- loss or limitation of driving privileges when the employee's job is identified as requiring a valid driver's license (regular or CDL).

Failure to report as required will result in disciplinary action up to and including termination.

Drug and Alcohol Treatment

The City of Newberg recognizes that alcohol and drug use may be a sign of chemical dependency and that employees with alcohol and drug problems can be successfully treated. The City is willing to help such employees obtain appropriate treatment.

An employee who believes that he or she has a problem involving the use of alcohol or drugs should ask a supervisor or Human Resources Director for assistance.

The City will work with an employee to identify all benefits and benefit programs that may be available to help deal with the problem. Attendance at any rehabilitation or treatment program will be a shared financial responsibility of the employee and City to the extent its existing benefits package covers some or all of the program costs.

Although the City recognizes that alcohol and drug abuse can be successfully treated and is willing to work with employees who may suffer from such problems, it is the employee's responsibility to seek assistance *before* drug or alcohol problems lead to disciplinary action. Once a violation of City policy is discovered, the employee's willingness to seek City or outside assistance will not "excuse" the violation and generally will have no bearing on the determination of appropriate disciplinary action.

Discipline and Consequences of Prohibited Conduct

An employee who tests positive for drugs or alcohol in accordance with this policy will be subject to either termination or a last-chance agreement.

A last-chance agreement is an agreement whereby an employee who would otherwise be terminated is provided an opportunity to address their substance abuse issue and/or performance or safety issues. The Last Chance Agreement shall be written to inform the employee of the problems noted with their performance and to specify the performance required for the employee to achieve in order to continue to be employed by the City. Violation

of the provisions of a Last Chance Agreement shall result in immediate termination of the employee, notwithstanding the provisions of any other personnel rule.

Confidentiality

All information from an employee's drug and alcohol evaluation is confidential and only those with a need to know are to be informed of test results. Disclosure of such information to any other person, agency, or the City is prohibited unless written authorization is obtained from the employee.